

The National Labor Relations Board (“the Board”), by its Deputy Associate General Counsel, respectfully submits that the Court should grant the motion of New Vista Nursing and Rehabilitation (“the Company”) for supplementation of the record on appeal and briefs to reflect developments in this case during a temporary remand to the Board. However, the Board additionally requests that the Court

order successive (as opposed to simultaneous) supplemental briefs, with the Company's brief due first, so that the Board may provide a complete response to any challenges that the Company raises regarding the Board's actions on remand. In support of this response and additional request, the Board shows as follows:

1. The Court remanded the administrative record in this case to the Board on December 4, 2015, so that a properly constituted Board panel could address three motions for reconsideration previously denied by a Board panel that included invalidly appointed Board members. On December 17, 2015, the Board (Members Miscimarra, Hirozawa, and McFerran) considered and denied the three outstanding motions for reconsideration.

2. The Company thereafter filed a motion for reconsideration of the December 17 order, objecting to Member Hirozawa's participation in considering the remanded motions and requesting his recusal from the case. On January 5, 2016, the Board denied the motion for reconsideration, and Member Hirozawa denied the request for his recusal.

3. As the Board has now concluded its consideration of the matters on remand, the Board agrees with the Company that the administrative record may properly be supplemented to reflect the developments in this case on remand. The Board is prepared to file a supplemented record immediately.

4. The Board also agrees with the Company that, soon after the supplemented record is filed, the Court should set a briefing schedule for the filing of limited supplemental briefs, to aid the Court's understanding of the developments on remand. The Board asks, however, that the issues for briefing be expressly limited to those raised by the temporary remand. The Board further submits that sequential briefs of no more than 3,000 words, with the Company filing its brief first and the Board filing its brief 30 days later, will facilitate full and orderly resolution of the additional issues raised by the remand.

WHEREFORE, the Board respectfully requests that the Court grant the Company's motion, expressly limit the issues for supplemental briefing, and provide for successive supplemental briefs as described above.

/s/ Linda Dreeben

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Dated at Washington, D.C.
this 14th day of January 2016

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NATIONAL LABOR RELATIONS BOARD

Petitioner/Cross-Respondent

and

1199 SEIU UNITED HEALTHCARE WORKERS
EAST, N.J. REGION

Intervenor

V.

NEW VISTA NURSING AND REHABILITATION

Respondent/Cross-Petitioner

Nos. 11-3440

12-1027

12-1936

Board Case:

22-CA-29988

CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2016, I electronically filed the foregoing Response of the National Labor Relations Board with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the CM/ECF system, and sent to the Clerk of Court, by first-class mail, the required number of paper copies.

I certify that the foregoing Response was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below.

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Dated at Washington, D.C.
this 14th day of January 2016